

ILLINOIS POLLUTION CONTROL BOARD
July 26, 2007

VILLAGE OF WILMETTE,)	
)	
Petitioner,)	
)	
v.)	PCB 07-48
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

CONCURRING OPINION (by T.E. Johnson):

I respectfully concur with the Board’s decision, which rules on cross-motions for summary judgment in this Underground Storage Tank (UST) Fund appeal. The Illinois Environmental Protection Agency (Agency) rejected the reimbursement application of the Village of Wilmette (Village), stating that the cleanup cost billings submitted by the Village exceeded the approved budget amounts. The Village appealed and the Board correctly affirms the Agency on summary judgment.

I write separately because I dissented two weeks ago in the companion appeal brought by the Village and docketed as PCB 07-27, in which the Board affirmed the Agency’s denial of a proposed budget amendment. *See Village of Wilmette v. IEPA*, PCB 07-27 (July 12, 2007). In that appeal, I felt that the Board should have reversed the Agency and remanded, directing the Agency to determine whether the Village’s proposed budget amendment was appropriate, regardless of the fact that the budget amendment was submitted after the No Further Remediation letter issued.

In this case, PCB 07-48, the Village appealed the Agency’s denial of its request for reimbursement of those monies that were the subject of the rejected budget amendment. When both appeals were still pending, the Village itself conceded that the Board’s decision in PCB 07-27 would be “dispositive of the issue raised in this appeal [PCB 07-48].” Response at 2. Though I believe the Agency should have considered the merits of the Village’s budget amendment in PCB 07-27, I agree that there are no genuine issues of material fact in the present appeal and that, as a matter of law, a UST owner or operator cannot be reimbursed costs for which there is no approved budget. *See, e.g.*, 35 Ill. Adm. Code 732.601(g); *see also* 35 Ill. Adm. Code 732.601(a) (stating general rule and exception). Here, it is undisputed that there is no approved budget for these billings. The Board therefore correctly grants the Agency’s motion for summary judgment and denies the Village’s motion for summary judgment.

For these reasons, I concur.

A handwritten signature in black ink, consisting of a large, stylized initial 'T' followed by a long, horizontal stroke.

Thomas E. Johnson

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the above concurring opinion was submitted on July 31, 2007.

A handwritten signature in black ink, written in a cursive style, reading 'John T. Therriault'.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board